

# **EXHIBIT 4**

**FILED**

JAN 04 2005

KIRI TORRE  
Chief Executive Officer/Clerk  
Superior Court of CA, County of Santa Clara  
*[Signature]* DEPUTY

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

In re

IGNACIO POLVOS PENA,

On Habeas Corpus

No.: 96973

ORDER

The habeas corpus petition of IGNACIO POLVOS PENA, hereinafter Petitioner, is denied. From an examination of the proceedings and the statement of decision it appears that the denial of parole is supported by the evidence before the Board. Further, there has been no violation of the plea agreement, since Petitioner was considered for parole and had the opportunity that it be granted after serving the equivalent of only 17 years. Neither at that time, nor now, does it appear that Petitioner is ready for release.

The evidence that Petitioner encountered his victim, left the scene to retrieve a weapon, returned and laid in wait, and

1 ultimately fired seven shots at the unsuspecting victim at close  
2 range, ~~does support~~ the finding that the committing offense was  
3 carried out in an especially cruel and callous manner and that  
4 Petitioner poses an unreasonable risk to public safety. His failure  
5 to upgrade vocationally and failure to develop any parole plans, and  
6 the opposition of the investigating and prosecuting agencies further  
7 support the decision.

8       The framework within which a parole decision is made provides  
9 that parole is the rule and not the exception. (*In re Smith* (2003)  
10 114 Cal.App.4th 343, 351.) Furthermore, the crime alone cannot  
11 forever be grounds for a parole denial without regard to all other  
12 factors. (*Biggs v. Terhune* (2003) 334 F.3d 910, 916.) This may be  
13 especially so when there has been a plea bargain in which the People  
14 have stipulated that the crime is no more than of the second degree.  
15 (See e.g. *People v. Gipson* (2004) 117 Cal.App.4th 1065 and *People v.*  
16 *Letteer* (2002) 103 Cal.App.4th 1308 regarding plea bargains as  
17 contracts.) But the determination of whether or not Petitioner  
18 presents a danger to society necessarily begins with recognition of  
19 the fact that he has established that danger by carrying out the  
20 committing offense. Thus, his performance in prison is of the utmost  
21 importance. He must show that he has made efforts towards, and had  
22 success in achieving personal growth and change since the time of his  
23 commitment. This may be demonstrated by attendance at group programs  
24 and meetings on topics relevant or related to the criminal conduct  
25 and development of skills and trades, without which there is a real  
26 likelihood of failure or slippage into past patterns when released  
27 from the highly structured environment of prison.

1 In this case, the totality of the record tends to indicate that  
2 Petitioner has not substantially changed from the person who  
3 committed the murder of Amador Mendoza Valencia. This case is unlike  
4 *Brown v. Poole* (2003) 337 F.3d 1155 because Petitioner has not been a  
5 model prisoner and has not made necessary efforts at personal growth  
6 and development of skills needed to succeed on parole and become a  
7 law abiding person.

8 The petition is denied.

9  
10  
11 DATED: Dec. 30, 2004

*Linda A. Condrón*  
LINDA CONDRON  
JUDGE OF THE SUPERIOR COURT



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13  
14 cc: Petitioner (at CSP Solano)  
15 Petitioner's Attorney (Jack Gordon)  
16 Attorney General (Brian Walsh)  
17 District Attorney (Margo Smith)  
18 CJIC  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

PEOPLE OF THE STATE OF CALIFORNIA )

Plaintiff, )

CASE NO. 96973

VS )

Ignacio Polvos Pena, )  
\_\_\_\_\_ )

PROOF OF SERVICE BY MAIL OF: ORDER TO SHOW CAUSE

CLERKS CERTIFICATE OF MAILING;

I CERTIFY THAT I AM NOT A PARTY TO THIS CAUSE AND THAT A TRUE COPY OF THIS DOCUMENT WAS MAILED FIRST CLASS POSTAGE PREPAID IN A SEALED ENVELOPE ADDRESSED AS SHOWN BELOW AND THE DOCUMENT WAS MAILED AT SAN JOSE, CALIFORNIA ON January 5, 2005

Dated: Jan 5, 2005

KIRRI TORRE  
County Clerk

By: Lydia Gonzalez  
Lydia Gonzalez

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